

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6579 of 1997

AND

SPECIAL CIVIL APPLICATION No. 6580 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHAW WALLACE & COMPANY LTD.

Versus

NR TRIVEDI

C/O JAYANTILAL R SHAH

Appearance:

Mr.R.P.BHATT, SENIOR COUNSEL with
MR MANISH R BHATT & MS.MANA M.BHATT for Petitioner
MR ANANT S DAVE for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 26/06/98

ORAL JUDGEMENT

#. Rule. Mr.Dave, learned advocate for the respondents waives service of rule. These two petitions are filed by Shaw Wallace & Company Limited to challenge the common award passed by the labour court at Baroda in Reference No.346/80 and 353/81 on 29th May,1997. Labour

Court at Baroda has decided both References by common judgment. The petitioner is the employer of both the respondents in both these petitions. The defence of the petitioner employer in the labour court as well as the contention before this court is based on same and similar facts. In the above circumstances, both these petitions are heard together and they are being disposed of by this common judgment.

#. The petitioner is the registered company under the Companies Act, 1956 and the said company is having its business all over the India. Their business is divided into various zones and west zone (Agriculture Zone) consists of three states Maharashtra, Madhya Pradesh and Gujarat. In these three states, the petitioner was having the business and their branch of Gujarat was also functioning till the year 1980. The respondent in SCA 6579/97 Shri N.R.Trivedi was appointed as salesman on probation by letter dated 20th May, 1975, whereas the respondent in petition No. 6580/97 Shri Jayantilal R. Shah was appointed as clerk on probation from 4th September, 1975. Both of them were appointed in their Gujarat Branch and both of them were subsequently confirmed in their respective posts by the petitioner.

#. The petitioner has averred that the petitioner was suffering heavy losses in their west-Agriculture zone continuously for number of years and therefore ultimately it was decided by the Company to close down their offices in Madhya Pradesh and Gujarat. The employees who were working in their Agricultural-West zone in Gujarat branch were having a labour union by name Shaw Wallace Employees Union. It is the claim of the petitioner that after they had taken decision to close down the unit in Gujarat and a talk/negotiations took place between the officer of the petitioner as representing the management and the office bearer of the union representing the workmen. It is the claim of the petitioner that in the meeting of 25th March, 1980, there was an agreement and settlement between the management and the workers' union and the said agreement and the settlement was recorded in the minutes of the meeting. Thereafter the copies of the minutes were sent to the company office as well as to the workers' union and both had issued letters of confirmation of said minutes. Thereafter as provided by the Industrial Disputes Act, a report was made to the State Government for recording the said settlement which was recorded in the minutes of the meeting by forwarding the letter on 15th April, 1980 and along with the said letter, besides sending the copies of the minutes of the meeting, the copy of the letters received from the

company i.e. management and the workers' union confirming the said minutes were also sent to the Government in order to record the said settlement. It is further case of the petitioner that accordingly the said settlement was recorded and thereafter as per the terms of the settlement, the services of both the respondents of these petitions were terminated in the year 1980. It is further claim of the petitioner that whatever retrenchment compensation was payable to the workmen as per the said settlement, was also paid to both the workmen by sending the same by cheque.

#. But inspite of these things, both the respondents of these two petitions, raised industrial dispute and accordingly two references No.346/80 and 353/81 came to be referred to the labour court of Baroda. It is claim of the petitioner that in the said references, the present petitioner had taken a contention that the services of both the respondents were retrenched as per the settlement terms and both of them, were also paid the retrenchment compensation, consequently, an industrial disputes raised by the both of them were not tenable and maintainable at law. It was further contended that as regards the respondent of SCA No.6579/80 Shri N.R.Trivedi is concerned, he was appointed as salesman, was not a workman and consequently the labour court has no jurisdiction to entertain and decide his claim. It was also contended by the petitioner that they had already closed down their unit at Gujarat and except one person, who is looking after as a caretaker the office in Gujarat, no other employee is engaged or working in Gujarat. But all these contentions raised by the present petitioner, were negatived by the learned labour court. The learned labour court came to the conclusion that what was shown, was only minutes of the meeting and that there was no settlement in law.

#. Being felt aggrieved by the said decision of the labour court, the industry - employer has preferred these two Special Civil Applications. It is urged before me by Mr.R.P.Bhatt, Senior Counsel appearing on behalf of the petitioner that there is misapplication of mind by the learned labour court and the learned labour court was not at all justified in recording a finding that there was no settlement and that there was also no closure of the unit of the petitioner in Gujarat. He urged before me that finding on both these issues by the labour court are perverse findings. As against this, the learned advocate for the respondents workmen urged before me that the finding recorded by the learned labour court are the findings recorded on appreciation of the material before

it. He urged before me that this court is considering the present proceeding under Article 226 & 227 of the Constitution of India and this court has no jurisdiction to reappreciate the evidence and to record a different finding. He urged before me that this court is not sitting as an appellate court and consequently this court cannot reappreciate the evidence. He contended before me that there are no grounds to interfere with the findings recorded by the Labour Court and consequently both these petitions deserve to be dismissed.

#. It is true that this court is considering these petitions under the powers conferred under Article 226 & 227 of the Constitution of India. It is settled law that when the matter is considered under article 226 and 227 of the Constitution of India, this court has not to act as an appellate court. This court is not empowered to have reappreciation of evidence and to record a different finding on facts. But it is settled law that if the finding recorded by the labour court are on account of a perverse reasoning or perverse approach to the matter then this court is entitled to interfere with the said finding by exercising the powers under article 226 & 227 of the Constitution of India. Therefore, bearing this legal position in mind, I proceed to consider these matters in the background of the submissions made before me.

#. It is a case of the petitioner before me that in the agriculture (West) zone which consists of three States viz. Maharashtra, Madhya Pradesh and Gujarat, the petitioner was suffering heavy losses for years together and therefore the petitioner had decided to close down its unit in Madhya Pradesh and Gujarat. Thereafter, there were negotiations between the labour union representing the employees-workmen in Gujarat and after said negotiations, a settlement took place and as per the said settlement, the employees were either absorbed by transfer wherever it was possible and others were retrenched and discharged by paying them necessary compensation as per the terms of settlement. The petitioner had produced the documents on record to support the said claim and had also examined the Secretary of the Union in order to prove that there was settlement between the industry and the labour union. The petitioner had produced before the labour court the documents consisting of minutes of the meeting held on 25th March, 1980. The letters dated 27th March, 1980 written by the management as well as by the labour union affirming and confirming the minutes recorded in the meeting of 25th March, 1980 and then a letter dated 25th

April,1980 written to the Government. The labour court has considered these documents and has come to the conclusion that inspite of the said documents, there was no valid and legal settlement. The petitioner had not only produced these documents but had also examined the Secretary of the Labour Union to prove his signature on the minutes as well as the signature on the letter admitting the correctness of the said minutes.

#. The copy of the said minutes is produced in this petition as Annexure-B at page 16 to 19. The said minutes mentions in the beginning is who were present in the said meeting. It shows that three persons were present on behalf of the management and three persons were present on behalf of the labour union and then it mentions that in respect of the agriculture west zone, the following has been agreed and it runs as under :-

"I. OPERATIONS - MADHYRA PRADESH & GUJARAT :

(A) Madhya Pradesh & Gujarat Operations shall be closed before the end of August,1980.

(B) All Salesmen/clerks etc. shall be offered transfer to other Divisions/Areas subject to their being suitable for the job & a permanent vacancy exists.

(C) In the event the above employees refuse transfers to other Division/ Areas it will be taken that they are not interested in continuing service in the company and they shall be paid their legal dues as per the Industrial Disputes Act.

(D) Those employees who cannot be transferred due to non availability of suitable permanent vacancies will be retrenched and paid their retrenchment compensation as laid down in the Industrial Disputes Act.

(E) Subject to suitable vacancy existing in Bombay or other areas A A Deshmukh & D Balakrishnan will be considered for transfer.

..... "

Then in the letter addressed to the State Government on 15th April,1986 along with Form No.24 under Section 25-F of Industrial Disputes Act,1947, it has been mentioned that along with said letter, a photostat copy of the minutes of the meeting held with the union was

attached to this letter and it is further mentioned as under :-

"Also attached are letters of dated 27th March, 1980 confirming that both the union and the management have accepted the minutes as recorded in toto."

#. Now if the above terms of the minutes and the said letter are read together, then it would be quite clear that there was agreement between the management and the labour union regarding the closure of the Gujarat Unit. No doubt there is no single document of an agreement / settlement jointly executed by the management and the labour association but no claim is made that there was a document of settlement and agreement. It is necessary to consider the documents and material produced before the labour court in order to find out as to whether in fact there is any agreement and settlement of the dispute between the parties or not. In the case of KALING JUTE PRODUCTS PVT. LTD. VS. PRESIDING OFFICER, INDIAN TRIAL TRIBUNAL 1980 (1) LLJ 239, it has been held that the non compliance with the provision of rules under the Industrial Disputes Act, will not make the agreement or settlement nullity as Rules are not mandatory. In the case of Johnson & Johnson Ltd. and Master Joint Kamdar Union and others 1997(2) LLJ 1157 it was contended that the settlement arrived at was in breach of procedure because it was not signed by the president of union. The said contention is negatived by Division Bench of Bombay High Court by holding that when the settlement was found to be fair and accepted by the all the workmen except few, procedural violation will not render the act otherwise just, fair and proper as illegal. In the instant case, the Secretary of the labour union was examined by the present petitioner before the labour court. He had deposed that there was settlement between the parties. Not only that he has also identified his signature on the minutes as well as on the letter confirming that the said minutes. There is no claim that except two respondents - original petitioners, any other employees of the petitioner in the Gujarat Unit has disputed the said settlement.

##. It is further to be mentioned here that the petitioner Shri N.R.Trivedi of SCA No.6579/97 was informed[by the registered letter dated 28th August, 1980. In the said letter in para-1, it has been mentioned clearly that in view of the continuous loss in west agriculture zone year after year, the company had decided to reorganize its offices in the agriculture

division (West) and an agreement and settlement had taken place between the union and the management to close down their operations in Madhya Pradesh and Gujarat. It is further mentioned that as per the terms of the last settlement, he was interviewed at Bombay in order to relocate him by sending him letter of 16th June, 1980 but he was found not suitable for the vacancy for which he was considered. It is very pertinent to note that the respondent had not given any explanation about the said letter. He has not denied that he was considered and interviewed for the post as per the said letter of 16th June, 1980. The said letter dated 28th August, 1980 is produced as Annexure-D. The said letter of Annexure-D also shows or proves that the conduct of the present respondent of having acted in terms of said settlement. Because when he goes for interview as per the terms of the settlement, as has been mentioned in the said letter, his claim that there was no settlement, could not be believed and accepted. Having participated in the process of reallocation as per settlement, he is estopped from disputing settlement.

##. Therefore in view of the above discussions, it would be quite clear that the learned labour court has not properly read and considered the minutes of the meeting of 25th March, 1980, confirmation letters of 27th March, 1980 and the letter of 15th April, 1980 written to the authority and letter dated 28-8-1980 addressed to respondent together. The labour court didn't take into consideration that except the two respondents in these two petitions, all other employees have accepted the said terms of said settlement and has not also taken into consideration the conduct of one of the respondents Shri N R Trividi of having acted in terms of the said settlement as disclosed by the letter of 20th August[, 1980 - Annexure - D. Similarly the labour court has further committed grave error in considering the other material for rejecting of settlement, on the ground that the company had issued subsequently an advertisement in Indian Express in the year 1986 seeking applications for filling the posts of salesmen. One of the condition in the said advertisement was that the candidate must know Gujarati, Hindi and Marathi as well as knowledge of agriculture. The labour court also mentioned that the said advertisement was published in Indian Express and in many other papers. It is very pertinent to note that it has not come on record that in pursuance of the said advertisement, any person was recruited and that he was posted in any office under Gujarat Unit. The learned labour court has taken into consideration the said advertisement as circumstances for holding that the claim

of the petitioner that their Gujarat Unit is not closed. At the cost of the repetition, it must be stated that agriculture west zone consisted of three states i.e. Maharashtra, Madhya Pradesh and Gujarat. The units of Madhya Pradesh and Gujarat were running into losses and therefore the decision was taken to close down the unit in Madhya Pradesh and Gujarat. Therefore, obviously the unit in Maharashtra continued to function and work. Therefore for functioning and running the said unit in Maharashtra, there was requirement of salesmen. Maharashtra is adjoining to Gujarat and the boundary area of Maharashtra adjoining the Gujarat State, there are people-agriculturists speaking Gujarati language. Therefore in these circumstances, if the qualification for selection of the salesmen, to be appointed in the Maharashtra is given as knowing Gujarati, then it could not be said that the salesmen appointed, is to be appointed only in Gujarat. Similarly, the learned labour court also took into consideration that the petitioner has not disposed of its office in Baroda. But from the evidence on record, it is quite clear that only one person is attending the said office in Baroda and there is no material to show that after 1980 any business or work was carried on by the petitioner from the said office. Therefore merely because the petitioner has not disposed of the said office in Baroda it is not proper and just to hold that they are functioning in Baroda for the agriculture zone (West Zone) and the Gujarat Unit is not closed.

##. The labour court also didn't take into consideration that the retrenchment and discharge of the respondents and other employees of the petitioner is under Section-25 F therefore in case, if the petitioner happens to restart its business in Gujarat, then the petitioner will have to give preference to the said retrenched employees. Mr.Bhatt, learned Senior Counsel for petitioner also submitted before me that in case of the petitioner rethinks of restarting its business in Gujarat then definitely the petitioner will certainly give first preference to those discharged and retrenched employees if they have not attended the age of superannuation.

##. In view of the above discussed circumstances and material on record, I am of the view that the finding recorded by the learned labour court that there was no settlement and closure of the unit by the petitioner of its Gujarat Unit is a perverse finding and the same finding recorded by the labour court deserves to be interfered with by exercising the powers under Article

##. The labour court has also further observed that there is no material on record to show whether the respondents had any earn leave to the credit and whether they have paid any amounts towards their earn leave. But it is very pertinent to note that during the inquiry before him, none of the respondents had raised specific contention that he had leave in balance and he was to get an amount towards the said leave period. Now apart from this, if there is no payment towards leave of the respondents, it would be open for the respondent to make a claim under Section 33 but that could not be a ground for rejecting the settlement.

##. The petitioner has also contended that the one of the respondents viz. Shri N.R.Trivedi was a salesman and therefore he cannot come before the industrial court. The appointment order of the said respondent N.R.Trivedi at Annexure - A shows that he was appointed as a salesman. The labour court has considered the said appointment letter along with statement made by said Mr.N.R.Trivedi. Mr.Trivedi had deposed that he had to collect material from the warehouses and to dispatch the same. Now when the said person had worked as salesman and if he happen to collect the material and to despatch the same as per their sales order booked by him, he would not cease to be a salesman. Therefore, merely because he performed that work of collecting the material or goods booked by him and sent the same, it could not be said that he becomes a workman. The labour court has even gone to the extent of saying that even if he is salesman and not a workman in view of passage of long period, he proceed to decide his claim. That approach of the labour court is not correct if the claimant before him is not workman then it has no jurisdiction to entertain and decide this claim. He cannot be absorbed towards on compensate or humanitarian ground. It must also further mentioned here that the reference was made to the labour court in 1980 and 1981 and they are decided in the year 1987. There is nothing on record to show that the present petitioner was responsible for delaying in disposing of the said petitions. Now apart form this, mere delay could not give jurisdiction to the labour court to decide the claim therefore on that count, the labour court had not to have entertain the claim of the respondent in SCA No.6579/97.

##. Therefore in view of the above discussed circumstances, I hold that both these petitions will have to be allowed. The awards passed by the labour court in

favour of the respondents in both these petitions will have to quashed and set aside and hence I allow these petitions and quash and set aside those awards. I direct the parties to bear their respective cost. The amount of cost deposited by the petitioner as per initial order of this court is not to be recovered from the respondeat, though I have directed the parties to bear their own costs.

Dt. 26/6/1998 (S.D.Pandit,J.)

(KPP)